

Hon. Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

MICHELLE ECHLIN F/K/A MICHELLE) Case No. 3:12-cv-05878-RBL

SIMKINS, on behalf of herself and all others)

similarly situated,

Plaintiff,

vs.

COLUMBIA COLLECTORS, INC. D/B/A)

CCI BILLING SYSTEMS,

Defendant.

) **PLAINTIFF’S REPLY IN SUPPORT OF**
) **HER MOTION TO CLARIFY AND**
) **RECONSIDER THIS COURT’S MARCH**
) **7, 2013 ORDER**

This Court explained that it “is convinced . . . [Ms. Echlin’s] claim of actual damages in her initial complaint was sufficient, and the Offer of Judgment for \$1500 plus fees and costs was not necessarily ‘more than [Ms. Echlin] could recover’ at trial, absent her subsequent amendment.” Dkt # 28, pp.1-2. It then noted that “[Ms. Echlin’s] rejection of that Offer did not make the claim in her initial complaint moot.” *Id.*, p.2. Ms. Echlin’s original complaint, therefore, presented “live” issues from the time that it was filed, until the time Ms. Echlin’s amended class action complaint superseded it as the operative complaint in this matter.¹ *See*

¹ The moment that Ms. Echlin filed her amended class action complaint it simultaneously superseded her original complaint, and became the operative complaint in this matter. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) (“amended complaint supersedes the original, the latter being treated thereafter as non-existent”) *overruled, on other grounds, by Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012).

1 Dkt # 19, pp.6-13. In other words, at no point in time did Columbia's offer of judgment moot
 2 Ms. Echlin's original complaint.²

3 This Court also explained that "a defendant cannot make a representative Plaintiff's
 4 class claim moot by making a Rule 68 Offer of the statutory maximum—even where she seeks
 5 only statutory damages." Dkt # 28, p.2. Because Ms. Echlin's amended class action complaint
 6 asserts a claim for relief on behalf of a class, Columbia's offer of judgment—even if it had not
 7 expired before Ms. Echlin filed her amended class action complaint—could not moot her
 8 amended class action complaint. *See* Dkt # 19, pp.13-16.

10 Simply, at all times Ms. Echlin asserted either a claim for actual damages, or a claim on
 11 behalf of a class. Consequently, no matter the timing of Columbia's offer of judgment, it
 12 neither did, nor could moot either Ms. Echlin's original complaint, or her amended class action
 13 complaint. The "unusual chronology of this case," *see* Dkt # 28, p.2, therefore, is irrelevant to
 14 the issue currently before this Court.

16 Respectfully submitted this 29th day of March, 2013.

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26 ² Noteworthy, Columbia moved to dismiss Ms. Echlin's amended class action complaint;
 27 it did not move to dismiss Ms. Echlin's original complaint. Dkt # 10 ("Defendant, Columbia
 28 Collectors, Inc. ("CCI") moves this court for an order dismissing the above-entitled action
 pursuant to *FRCP 12 (b) (1)* because [Ms. Echlin's] First Amended Complaint (ECF No. 9)
 (FAC) is moot.").

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CERTIFICATE OF SERVICE

I certify that on March 29, 2013, the foregoing document was filed with the court using CM/ECF, which will send notification of such filing to:

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